

SENATE BILL No. 131

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-8.

Synopsis: Disability benefits for public safety officers. Provides that a member of the 1925 police pension fund, 1937 firefighters' pension fund, 1953 police pension fund, or 1977 police officers' and firefighters' pension fund who develops cancer or a heart condition related to the police officer's or firefighter's duties is entitled to 75% of the salary of a first class patrolman or firefighter. Provides that the death of a police officer or firefighter from cancer or a heart condition related to the police officer's or firefighter's duties is a death in the line of duty.

Effective: July 1, 2005.

Craycraft

January 4, 2005, read first time and referred to Committee on Pensions and Labor.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 131

A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 36-8-6-8 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) For a member who became
3 disabled before July 1, 2000, the 1925 fund shall be used to pay a
4 pension in a sum determined by the local board, but not exceeding:
5 (1) for a disability or disease occurring before July 1, 1982, fifty
6 percent (50%); and
7 (2) for a disability or disease occurring after June 30, 1982,
8 fifty-five percent (55%);
9 of the salary of a first class patrolman, to a member of the police
10 department who has suffered or contracted a mental or physical disease
11 or disability that renders the patrolman unable to perform the essential
12 functions of any duty in the police department, considering reasonable
13 accommodation to the extent required by the Americans with
14 Disabilities Act. If a member who becomes eligible for a disability
15 pension has more than twenty (20) years of service, the member is
16 entitled to receive a disability pension equal to the pension the member
17 would have received if the member had retired on the date of the



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1 disability.

2 (b) Except as otherwise provided in this subsection, for a member
3 who becomes disabled after June 30, 2000, the 1925 fund shall be used
4 to pay a pension in a sum determined by the local board, but not
5 exceeding fifty-five percent (55%) of the salary of a first class
6 patrolman, to a member of the police department who has suffered or
7 contracted a mental or physical disease or disability:

8 (1) that is:

9 (A) the direct result of:

10 (i) a personal injury that occurs while the fund member is on
11 duty;

12 (ii) a personal injury that occurs while the fund member is
13 off duty and is responding to an offense or a reported
14 offense, in the case of a police officer; or

15 (iii) an occupational disease (as defined in IC 22-3-7-10),
16 including a duty related disease that is also included within
17 clause (B);

18 (B) a duty related disease (for purposes of this section, a "duty
19 related disease" means a disease arising out of the fund
20 member's employment; a disease is considered to arise out of
21 the fund member's employment if it is apparent to the rational
22 mind, upon consideration of all of the circumstances, that:

23 (i) there is a connection between the conditions under which
24 the fund member's duties are performed and the disease;

25 (ii) the disease can be seen to have followed as a natural
26 incident of the fund member's duties as a result of the
27 exposure occasioned by the nature of the fund member's
28 duties; and

29 (iii) the disease can be traced to the fund member's
30 employment as the proximate cause); or

31 (C) a disability presumed incurred in the line of duty under
32 IC 5-10-13; and

33 (2) that renders the member unable to perform the essential
34 functions of any duty in the police department, considering
35 reasonable accommodation to the extent required by the
36 Americans with Disabilities Act.

37 If a member who becomes eligible for a disability pension has more
38 than twenty (20) years of service, the member is entitled to receive a
39 disability pension equal to the pension the member would have
40 received if the member had retired on the date of the disability.

41 (c) Except as otherwise provided in this subsection, for a member
42 who becomes disabled after June 30, 2000, the 1925 fund shall be used

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to pay a pension in a sum determined by the local board, but not exceeding fifty-five percent (55%) of the salary of a first class patrolman, to a member of the police department who has suffered or contracted a mental or physical disease or disability:

(1) that is not described in subsection (b)(1); and

(2) that renders the member unable to perform the essential functions of any duty in the police department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

If a member who becomes eligible for a disability pension has more than twenty (20) years of service, the member is entitled to receive a disability pension equal to the pension the member would have received if the member had retired on the date of the disability.

(d) The member must have retired from active service after a physical examination by the police surgeon or another surgeon appointed by the local board. The disability must be determined solely by the local board after the examination and a hearing conducted under IC 36-8-8-12.7. A member shall be retained on active duty with full pay until the member is retired by the local board because of the disability.

(e) After a member has been retired upon pension, the local board may, at any time, require the retired member to again be examined by the police surgeon or another surgeon appointed by the local board. After the examination the local board shall conduct a hearing under IC 36-8-8-12.7 to determine whether the disability still exists and whether the retired member should remain on the pension roll. The retired member shall be retained on the pension roll until reinstated in the service of the police department, except in case of resignation. If after the examination and hearing the retired member is found to have recovered from the member's disability and to be again fit for active duty, then the member shall be put on active duty with full pay and from that time is no longer entitled to payments from the 1925 fund. If the member fails or refuses to return to active duty, the member waives all rights to further benefits from the 1925 fund.

(f) If the salary of a first class patrolman is increased or decreased, the pension payable shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below:

(1) the amount of the first full monthly pension received by that person; or

(2) fifty-five percent (55%) of the salary of a first class patrolman; whichever is greater.

(g) Time spent receiving disability benefits is considered active

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1 service for the purpose of determining retirement benefits until the
2 member has a total of twenty (20) years of service.

3 (h) A fund member who is receiving disability benefits under this
4 chapter shall be transferred from disability to regular retirement status
5 when the member becomes fifty-five (55) years of age.

6 **(i) Notwithstanding subsection (a), (b), or (c), for a member who**
7 **becomes disabled after June 30, 2005, the 1925 fund shall be used**
8 **to pay a pension, in the sum of seventy-five percent (75%) of the**
9 **salary of a first class patrolman, to a member of the police**
10 **department who has suffered a disabling cancer or heart condition**
11 **that:**

12 (1) develops and manifests itself while the member is in the
13 service of the police department;

14 (2) may be caused by:

15 (A) exposure to heat, radiation, or a known or suspected
16 carcinogen; or

17 (B) the physical stresses of the member's duties; and

18 (3) renders the member unable to perform the member's
19 duties in the police department, considering reasonable
20 accommodation to the extent required by the Americans with
21 Disabilities Act.

22 SECTION 2. IC 36-8-6-10.1 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10.1. (a) This section
24 applies to a member who dies in the line of duty after August 31, 1982.

25 (b) The surviving spouse is entitled to a monthly benefit, during the
26 spouse's lifetime, equal to the benefit to which the member would have
27 been entitled on the date of the member's death, but no less than fifty
28 percent (50%) of the monthly wage received by a first class patrolman.
29 If the surviving spouse remarried before September 1, 1983, and
30 benefits ceased on the date of remarriage, the benefits for the surviving
31 spouse shall be reinstated on July 1, 1997, and continue during the life
32 of the surviving spouse.

33 (c) A payment shall also be made to each child of a deceased
34 member less than eighteen (18) years of age, in an amount fixed by
35 ordinance, but at least an amount equal to twenty percent (20%) of the
36 monthly pay of a first class patrolman per month to each child:

37 (1) until the child becomes eighteen (18) years of age;

38 (2) until the child becomes twenty-three (23) years of age if the
39 child is enrolled in and regularly attending a secondary school or
40 is a full-time student at an accredited college or university; or

41 (3) during the entire period of the child's physical or mental
42 disability;

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1 whichever period is longer.

2 (d) The surviving children of the deceased member who are eligible
3 to receive a benefit under subsection (c) may receive an additional
4 benefit in an amount fixed by ordinance, but the total additional benefit
5 under this subsection to all the member's children may not exceed a
6 total of thirty percent (30%) of the monthly wage received by a first
7 class patrolman. However, this limitation does not apply to the children
8 of a member who are physically or mentally disabled.

9 (e) If a deceased member leaves no surviving spouse and no child
10 who qualifies for benefits under subsection (c) but does leave a
11 dependent parent or parents, an amount equal to twenty percent (20%)
12 of the monthly pay of a first class patrolman per month from the time
13 of the member's death shall be paid to the dependent parent or parents
14 during their dependency. When both parents survive, the total amount
15 is still twenty percent (20%), to be paid to them jointly. In all cases of
16 payment to a dependent relative of a deceased member, the board is the
17 final judge of the question of necessity and dependency and of the
18 amount to be paid. The board may also reduce or terminate temporarily
19 or permanently a payment to a dependent relative of a deceased
20 member when it determines that the condition of the fund or other
21 circumstances make this action necessary.

22 (f) If the salary of a first class patrolman is increased or decreased,
23 the pension payable under this section shall be proportionately
24 increased or decreased. However, the monthly pension payable to a
25 member or survivor may not be reduced below the amount of the first
26 full monthly pension received by that person.

27 (g) For purposes of this section, "dies in the line of duty" means
28 death that occurs as a direct result of:

29 (1) personal injury or illness caused by incident, accident, or
30 violence that results from any action that the member in the
31 member's capacity as a police officer:

32 ~~(1)~~ (A) is obligated or authorized by rule, regulation, condition
33 of employment or service, or law to perform; or

34 ~~(2)~~ (B) performs in the course of controlling or reducing crime
35 or enforcing the criminal law; or

36 (2) cancer or a heart condition that:

37 (A) develops and manifests itself while the member is in the
38 service of the police department; and

39 (B) may be caused by:

40 (i) exposure to heat, radiation, or a known or suspected
41 carcinogen; or

42 (ii) the physical stresses of the member's duties.

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The term includes a death presumed incurred in the line of duty under IC 5-10-13.

(h) The unit of local government that employed the deceased member shall after December 31, 2003, offer to provide and pay for health insurance coverage for the member's surviving spouse and for each natural child, stepchild, or adopted child of the member:

(1) until the child becomes eighteen (18) years of age;

(2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university; or

(3) during the entire period of the child's physical or mental disability;

whichever period is longest. If health insurance coverage is offered by the unit to active members, the health insurance provided to a surviving spouse and child under this subsection must be equal in coverage to that offered to active members. The offer to provide and pay for health insurance coverage shall remain open for as long as there is a surviving spouse or as long as a natural child, stepchild, or adopted child of the member is eligible for the coverage under subdivision (1), (2), or (3).

SECTION 3. IC 36-8-7-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) Benefits paid under this section are subject to section 2.5 of this chapter.

(b) If a member of the fire department becomes seventy (70) years of age or is found upon examination by a medical officer to be physically or mentally disabled and unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, so as to make necessary the person's retirement from all service with the department, the local board shall retire the person.

(c) The local board may retire a person for disability only after a hearing conducted under IC 36-8-8-12.7.

(d) If after the hearing the local board determines that a person who became disabled before July 1, 2000, is disabled and unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, the local board shall then authorize the monthly payment to the person from the 1937 fund of an amount equal to fifty-five percent (55%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension. All physical and mental examinations of members of the fire department shall be made on order of the local board by a medical officer designated by the local board.

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(e) If after the hearing under this section and a recommendation under section 12.5 of this chapter, the 1977 fund advisory committee determines that a person who becomes disabled after June 30, 2000:

(1) has a disability that is:

(A) the direct result of:

(i) a personal injury that occurs while the fund member is on duty;

(ii) a personal injury that occurs while the fund member is responding to an emergency or reported emergency for which the fund member is trained; or

(iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B);

(B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment; a disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause); or

(C) a disability presumed incurred in the line of duty under IC 5-10-13; and

(2) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act;

the local board shall then authorize the monthly payment to the person from the 1937 fund of an amount equal to fifty-five percent (55%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension. All physical and mental examinations of members of the fire department shall be made on order of the local board by a medical officer designated by the local board.

(f) If after the hearing under this section and a recommendation under section 12.5 of this chapter, the 1977 fund advisory committee determines that a person who becomes disabled after June 30, 2000:

(1) has a disability that is not a disability described in subsection

(e)(1); and

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(2) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act; the local board shall then authorize the monthly payment to the person from the 1937 fund of an amount equal to fifty-five percent (55%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension. All physical and mental examinations of members of the fire department shall be made on order of the local board by a medical officer designated by the local board.

(g) Notwithstanding subsections (d), (e), and (f), if, after a hearing under this section, the local board determines that a person who becomes disabled after June 30, 2005, has suffered a disabling cancer or heart condition that:

(1) develops and manifests itself while the member is in the service of the fire department;

(2) may be caused by:

(A) exposure to heat, radiation, or a known or suspected carcinogen; or

(B) the physical stresses of the member's duties; and

(3) renders the member unable to perform the member's duties in the fire department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act;

the local board shall authorize the monthly payment to the person from the 1937 fund of an amount equal to seventy-five percent (75%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension. All physical and mental examinations of members of the fire department shall be made on order of the local board by a medical officer designated by the local board.

SECTION 4. IC 36-8-7-12.4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12.4. (a) This section applies to an active member who dies in the line of duty after August 31, 1982.

(b) If a member dies in the line of duty after August 31, 1982, the surviving spouse is entitled to a monthly benefit, during the spouse's lifetime, equal to the benefit to which the member would have been entitled on the date of the member's death, but not less than fifty percent (50%) of the monthly wage received by a fully paid first class firefighter. If the spouse remarried before September 1, 1983, and benefits ceased on the date of remarriage, the benefits for the surviving spouse shall be reinstated on July 1, 1997, and continue during the life

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of the surviving spouse. If the pension of the surviving spouse of a deceased member has ceased by virtue of the spouse's remarriage, and if the person to whom the spouse has remarried was a retired member of the fire department who was also entitled to a pension, then upon the death of the member to whom the spouse had remarried, the spouse is entitled to receive a pension as the surviving spouse of a deceased member as though the spouse had not been remarried.

(c) If a member dies while in active service, the member's children who are:

(1) less than eighteen (18) years of age; or

(2) less than twenty-three (23) years of age if the children are enrolled in and regularly attending a secondary school or are full-time students at an accredited college or university;

are each entitled to receive an amount fixed by ordinance but not less than twenty percent (20%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension.

(d) The surviving children of the deceased member who are eligible to receive a benefit under subsection (c) may receive an additional benefit in an amount fixed by ordinance, but the total additional benefit under this subsection to all the member's children may not exceed a total of thirty percent (30%) of the monthly wage received by a first class firefighter. However, this limitation does not apply to the children of a member who are physically or mentally disabled.

(e) If a deceased member of the fire department leaves no surviving spouse or children but leaves a dependent parent, and upon satisfactory proof that the parent was wholly dependent upon the deceased member, the local board shall authorize the monthly payment to the parent from the 1937 fund. Each parent of a deceased member who was eligible for a pension under this subsection is entitled to receive jointly an amount equal to thirty percent (30%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension.

(f) For purposes of this section, "dies in the line of duty" means death that occurs as a direct result of:

(1) personal injury or illness caused by incident, accident, or violence that results from any action that the member, in the member's capacity as a firefighter:

~~(A)~~ (A) is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or

~~(B)~~ (B) performs while on the scene of an emergency run (including false alarms) or on the way to or from the scene; **or**

(2) **cancer or a heart condition that:**

(A) **develops and manifests itself while the member is in the**

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1 **service of the fire department; and**

2 **(B) may be caused by:**

3 **(i) exposure to heat, radiation, or a known or suspected**
 4 **carcinogen; or**

5 **(ii) the physical stresses of the member's duties.**

6 The term includes a death presumed incurred in the line of duty under
 7 IC 5-10-13.

8 (g) If the local board finds upon the submission of satisfactory proof
 9 that a child eighteen (18) years of age or older is mentally or physically
 10 incapacitated, is not a ward of the state, and is not receiving a benefit
 11 under subsection (c)(2), the child is entitled to receive the same amount
 12 as is paid to the surviving spouse of a deceased firefighter, as long as
 13 the mental or physical incapacity continues. A sum paid for the benefit
 14 of a child or children shall be paid to the remaining parent, if alive, as
 15 long as the child or children reside with and are supported by the
 16 parent. If the parent dies, the sum shall be paid to the lawful guardian
 17 of the child or children.

18 (h) The monthly pension payable to a survivor may not be reduced
 19 below the amount of the first full monthly pension received by that
 20 person.

21 (i) A benefit payable under this section shall be paid in not less than
 22 twelve (12) monthly installments.

23 (j) The unit of local government that employed the deceased
 24 member shall after December 31, 2003, offer to provide and pay for
 25 health insurance coverage for the member's surviving spouse and for
 26 each natural child, stepchild, or adopted child of the member:

27 (1) until the child becomes eighteen (18) years of age;

28 (2) until the child becomes twenty-three (23) years of age if the
 29 child is enrolled in and regularly attending a secondary school or
 30 is a full-time student at an accredited college or university; or

31 (3) during the entire period of the child's physical or mental
 32 disability;

33 whichever period is longest. If health insurance coverage is offered by
 34 the unit to active members, the health insurance provided to a surviving
 35 spouse and child under this subsection must be equal in coverage to
 36 that offered to active members. The offer to provide and pay for health
 37 insurance coverage shall remain open for as long as there is a surviving
 38 spouse or as long as a natural child, stepchild, or adopted child of the
 39 member is eligible for the coverage under subdivision (1), (2), or (3).

40 SECTION 5. IC 36-8-7.5-13 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. (a) For a member
 42 who becomes disabled before July 1, 2000, the 1953 fund shall be used

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to pay a pension in an annual sum equal to:

- (1) fifty percent (50%) for a disease or disability occurring before July 1, 1991; and
- (2) fifty-five percent (55%) for a disease or disability occurring after June 30, 1991;

of the salary of a first class patrolman in the police department, computed and payable as prescribed by section 12(b) of this chapter, to an active member of the police department who has been in active service for more than one (1) year and who has suffered or contracted a mental or physical disease or disability that ~~render~~ renders the member permanently unfit for active duty in the police department, or to an active member of the police department who has been in active service for less than one (1) year who has suffered or received personal injury from violent external causes while in the actual discharge of the member's duties as a police officer. The pensions provided for in this subsection shall be paid only so long as the member of the police department remains unfit for active duty in the police department.

(b) For a member who becomes disabled after June 30, 2000, the 1953 fund shall be used to pay a pension in an annual sum equal to fifty-five percent (55%) of the salary of a first class patrolman in the police department, computed on an annual basis and payable in twelve (12) equal monthly installments, to an active member of the police department who:

(1) has suffered or incurred a disability that renders the member permanently unfit for active duty in the police department and that is:

(A) the direct result of:

- (i) a personal injury that occurs while the fund member is on duty;
- (ii) a personal injury that occurs while the fund member is off duty and is responding to an offense or a reported offense; or
- (iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B);

(B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment; a disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

- (i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

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(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause); or

(C) a disability presumed incurred in the line of duty under IC 5-10-13; and

(2) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

The pensions provided for in this subsection shall be paid only so long as the member of the police department remains unfit for active duty in the police department. If the salary of a first class patrolman is increased or decreased, the pension payable shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person.

(c) For a member who becomes disabled after June 30, 2000, the 1953 fund shall be used to pay a pension in an annual sum equal to fifty-five percent (55%) of the salary of a first class patrolman in the police department, computed on an annual basis and payable in twelve (12) equal monthly installments, to an active member of the police department who has been in active service for at least one (1) year and:

(1) has suffered or incurred a disability that:

(A) renders the member permanently unfit for active duty in the police department; and

(B) is not described in subsection (b)(1); and

(2) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

The pension provided in this subsection shall be paid only so long as the member of the police department remains unfit for active duty in the police department. If the salary of a first class patrolman is increased or decreased, the pension payable shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person.

(d) For a member who became disabled before July 1, 2000, the 1953 fund shall be used to pay temporary benefits in an annual sum equal to thirty percent (30%) of the salary of a first class patrolman in the police department, computed and payable as prescribed by section

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12(a) of this chapter, to an active member of the police department who has been in active service for more than one (1) year and who has suffered any physical or mental disability that renders the member temporarily or permanently unable to perform ~~his~~ **the** duties as a member of the police department, or to an active member of the police department who has been in active service for less than one (1) year and who has suffered or received personal injury from violent external causes while in the actual discharge of the member's duties as a police officer, until the time the member is physically and mentally able to return to active service on the police department.

(e) For a member who becomes disabled after June 30, 2000, the 1953 fund shall be used to pay a pension in an annual sum equal to thirty percent (30%) of the salary of a first class patrolman in the police department, computed on an annual basis and payable in twelve (12) equal monthly installments, to an active member of the police department who:

(1) suffers or incurs a disability that renders the member temporarily unfit for active duty in the police department and that is:

(A) the direct result of:

(i) a personal injury that occurs while the fund member is on duty;

(ii) a personal injury that occurs while the fund member is off duty and is responding to an offense or a reported offense, in the case of a police officer; or

(iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B);

(B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment; a disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause); or

(C) a disability presumed incurred in the line of duty under

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1 IC 5-10-13; and
 2 (2) is unable to perform the essential functions of the job,
 3 considering reasonable accommodation to the extent required by
 4 the Americans with Disabilities Act.

5 The pension provided in this subsection shall be paid only so long as
 6 the member of the police department remains unfit for active duty in
 7 the police department. If the salary of a first class patrolman is
 8 increased or decreased, the pension payable shall be proportionately
 9 increased or decreased. However, the monthly pension payable to a
 10 member or survivor may not be reduced below the amount of the first
 11 full monthly pension received by that person.

12 (f) For a member who becomes disabled after June 30, 2000, the
 13 1953 fund shall be used to pay temporary benefits in an annual sum
 14 equal to thirty percent (30%) of the salary of a first class patrolman in
 15 the police department, computed on an annual basis and payable in
 16 twelve (12) equal monthly installments, to an active member of the
 17 police department:

- 18 (1) who has been in active service for at least one (1) year;
- 19 (2) suffers or incurs a disability that:
 - 20 (A) renders the member temporarily unfit for active duty in the
 - 21 police department; and
 - 22 (B) is not described in subsection (e)(1); and
- 23 (3) is unable to perform the essential functions of the job,
 24 considering reasonable accommodation to the extent required by
 25 the Americans with Disabilities Act.

26 The pension provided for in this subsection shall be paid only so long
 27 as the member of the police department remains unfit for active duty
 28 in the police department. If the salary of a first class patrolman is
 29 increased or decreased, the pension payable shall be proportionately
 30 increased or decreased. However, the monthly pension payable to a
 31 member or survivor may not be reduced below the amount of the first
 32 full monthly pension received by that person.

33 (g) If an application is made by an active member of the police
 34 department because of physical or mental disability for temporary
 35 benefits as provided in subsection (d), (e), or (f), the benefit is not
 36 payable until the local board determines after a hearing conducted
 37 under IC 36-8-8-12.7 that the member is unfit for active duty on the
 38 police department, considering reasonable accommodation to the
 39 extent required by the Americans with Disabilities Act. Before the
 40 hearing, a physician to be appointed by the local board shall examine
 41 the member and certify in writing whether in the physician's opinion
 42 the member is unfit, physically or mentally, for active duty in the police

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department. After the pension or benefit has been granted by the local board, the payment commences with the original date of the injury or illness causing the disability.

(h) A member who has been granted a disability benefit under this section and who fails or refuses to submit to a physical examination at any time by the local board physician has no right in the future to receive the disability benefit, and any benefit that has been granted shall be immediately canceled by the local board.

(i) The local board may, from time to time, require a member of the police department who is receiving at any time disability benefits or pensions as provided in this section to be examined by the physician appointed by the local board. After the examination, the local board shall conduct a hearing under IC 36-8-8-12.7 to determine whether the disability still exists and whether the member should continue to receive the pension or benefit. If after the examination and hearing the member is found to have recovered from the member's disability and is fit for active duty on the police department, then upon written notice to the member by the local board, the member shall be reinstated in active service, the safety board shall be informed of the action of the local board, and from that time the member is no longer entitled to payments from the 1953 fund. If the member fails or refuses to return to active duty after ordered by the local board, the member ceases to be a member of the 1953 fund and waives all rights to any further pensions or benefits provided by the 1953 fund.

(j) Notwithstanding any other provision of this chapter, no disability benefit may be paid for any disability based upon or caused by any mental or physical condition that a member had at the time the member entered or reentered the member's active service in the police department.

(k) If a member who is receiving disability benefits under subsection (a), (b), or (c) for a disease or disability occurring after June 30, 1991, is transferred from disability to regular retirement status, the member's monthly pension may not be reduced below fifty-five percent (55%) of the salary of a first class patrolman at the time of payment of the pension.

(l) To the extent required by the Americans with Disabilities Act, the transcripts, reports, records, and other material compiled to determine the existence of a disability shall be:

- (1) kept in separate medical files for each member; and
- (2) treated as confidential medical records.

(m) A fund member who is receiving disability benefits under this chapter shall be transferred from disability to regular retirement status

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when the member becomes fifty-five (55) years of age.

(n) Notwithstanding subsections (a) through (f), for a member who becomes disabled after June 30, 2005, the 1953 fund shall be used to pay a pension, in the sum of seventy-five percent (75%) of the salary of a first class patrolman, to a member of the police department who has suffered a disabling cancer or heart condition that:

(1) develops and manifests itself while the member is in the service of the police department;

(2) may be caused by:

(A) exposure to heat, radiation, or a known or suspected carcinogen; or

(B) the physical stresses of the member's duties; and

(3) renders the member unable to perform the member's duties in the police department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

The pension provided for in this subsection shall be paid only as long as the member of the police department remains unfit for active duty in the police department. If the salary of a first class patrolman is increased or decreased, the pension payable shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person.

SECTION 6. IC 36-8-7.5-14.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14.1. (a) This section applies to an active member who dies in the line of duty after August 31, 1982.

(b) If a member dies in the line of duty after August 31, 1982, the surviving spouse is entitled to a monthly benefit, during the spouse's lifetime, equal to the benefit to which the member would have been entitled on the date of the member's death, but not less than fifty percent (50%) of the monthly wage received by a first class patrolman. If the spouse remarried before September 1, 1983, benefits ceased on the date of remarriage. However, if a member of the police department dies in the line of duty after August 31, 1982, and the member's surviving spouse remarried before September 1, 1983, the benefits for the surviving spouse shall be reinstated on July 1, 1995, and continue during the life of the surviving spouse.

(c) The 1953 fund shall also be used to pay an annuity equal to twenty percent (20%) of the salary of a first class patrolman on the

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police department, computed as provided in section 12(b) of this chapter and payable in monthly installments, to each dependent child of a member of the fund who dies from any cause while in the actual discharge of duties as a police officer. The pension to each child continues:

- (1) until the child becomes eighteen (18) years of age;
- (2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university; or
- (3) during the entire period of the child's physical or mental disability;

whichever period is longest. However, the pension to the child ceases if the child marries or is legally adopted by any person.

(d) The surviving children of the deceased member who are eligible to receive a benefit under subsection (c) may receive an additional benefit in an amount fixed by ordinance, but the total benefit to all the member's children under this subsection may not exceed a total of thirty percent (30%) of the monthly wage received by a first class patrolman. However, this limitation does not apply to the children of a member who are physically or mentally disabled.

(e) If a deceased member leaves no surviving spouse and no child who qualifies for a benefit under subsection (c) but does leave a dependent parent or parents, the 1953 fund shall be used to pay an annuity not greater than a sum equal to twenty percent (20%) of the salary of a first class patrolman on the police department, computed and payable as provided in section 12(b) of this chapter, payable monthly to the dependent parent or parents of a member of the police department who dies from any cause while in the actual discharge of duties as a police officer. The annuity continues for the remainder of the life or lives of the parent or parents as long as either or both fail to have sufficient other income for their proper care, maintenance, and support.

(f) In all cases of payment to a dependent relative of a deceased member, the local board is the final judge of the question of necessity and dependency and of the amount within the stated limits to be paid. The local board may also reduce or terminate temporarily or permanently a payment to a dependent relative of a deceased member when it determines that the condition of the 1953 fund or other circumstances make this action necessary.

(g) If the salary of a first class patrolman is increased or decreased, the pension payable under this section shall be proportionately increased or decreased. However, the monthly pension payable to a

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member or survivor may not be reduced below the amount of the first full monthly pension received by that person.

(h) For purposes of this section, "dies in the line of duty" means death that occurs as a direct result of:

(1) personal injury or illness caused by incident, accident, or violence that results from any action that the member, in the member's capacity as a police officer:

(A) is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or

(B) performs in the course of controlling or reducing crime or enforcing the criminal law; or

(2) cancer or a heart condition that:

(A) develops and manifests itself while the member is in the service of the police department; and

(B) may be caused by:

(i) exposure to heat, radiation, or a known or suspected carcinogen; or

(ii) the physical stresses of the member's duties.

The term includes a death presumed incurred in the line of duty under IC 5-10-13.

(i) The unit of local government that employed the deceased member shall after December 31, 2003, offer to provide and pay for health insurance coverage for the member's surviving spouse and for each natural child, stepchild, or adopted child of the member:

(1) until the child becomes eighteen (18) years of age;

(2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university; or

(3) during the entire period of the child's physical or mental disability;

whichever period is longest. If health insurance coverage is offered by the unit to active members, the health insurance provided to a surviving spouse and child under this subsection must be equal in coverage to that offered to active members. The offer to provide and pay for health insurance coverage shall remain open for as long as there is a surviving spouse or as long as a natural child, stepchild, or adopted child of the member is eligible for coverage under subdivision (1), (2), or (3).

SECTION 7. IC 36-8-8-12.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12.5. (a) This section applies only to a fund member who:

(1) is hired for the first time after December 31, 1989;

(2) chooses coverage by this section and section 13.5 of this

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chapter under section 12.4 of this chapter; or

(3) is described in section 12.3(c)(2) of this chapter.

(b) At the same hearing where the determination of whether the fund member has a covered impairment is made, the local board shall determine the following:

(1) Whether the fund member has a Class 1 impairment. A Class 1 impairment is a covered impairment that is the direct result of one (1) or more of the following:

(A) A personal injury that occurs while the fund member is on duty.

(B) A personal injury that occurs while the fund member is off duty and is responding to:

(i) an offense or a reported offense, in the case of a police officer; or

(ii) an emergency or reported emergency for which the fund member is trained, in the case of a firefighter.

(C) An occupational disease (as defined in IC 22-3-7-10). A covered impairment that is included within this clause and subdivision (2) shall be considered a Class 1 impairment.

(D) A health condition caused by an exposure risk disease that results in a presumption of disability or death incurred in the line of duty under IC 5-10-13.

(E) Cancer or a heart condition that:

(i) develops and manifests itself while the fund member is in the service of the police or fire department; and

(ii) may be caused by exposure to heat, radiation, or a known or suspected carcinogen or the physical stresses of the fund member's duties.

(2) Whether the fund member has a Class 2 impairment. A Class 2 impairment is a covered impairment that is a duty related disease. A duty related disease means a disease arising out of the fund member's employment. A disease shall be considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(A) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(B) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(C) the disease can be traced to the fund member's employment as the proximate cause.

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(3) Whether the fund member has a Class 3 impairment. A Class 3 impairment is a covered impairment that is not a Class 1 impairment or a Class 2 impairment.

SECTION 8. IC 36-8-8-13.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13.5. (a) This section applies only to a fund member who:

- (1) is hired for the first time after December 31, 1989;
- (2) chooses coverage by this section and section 12.5 of this chapter under section 12.4 of this chapter; or
- (3) is described in section 12.3(c)(2) of this chapter.

(b) A fund member who is determined to have a Class 1 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to a monthly base benefit equal to forty-five percent (45%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment. **However, a fund member who is determined to have a Class 1 impairment under section 12.5(b)(1)(E) of this chapter is entitled to receive a monthly base benefit equal to seventy-five percent (75%) of the monthly salary of a first class patrolman or firefighter.**

(c) A fund member who is determined to have a Class 2 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to a monthly base benefit equal to twenty-two percent (22%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment plus one-half percent (0.5%) of that salary for each year of service, up to a maximum of thirty (30) years of service.

(d) For applicants hired before March 2, 1992, a fund member who is determined to have a Class 3 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to a monthly base benefit equal to the product of the member's years of service (not to exceed thirty (30) years of service) multiplied by one percent (1%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment.

(e) For applicants hired after March 1, 1992, or described in section 12.3(c)(2) of this chapter, a fund member who is determined to have a

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Class 3 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to the following benefits instead of benefits provided under subsection (d):

(1) If the fund member did not have a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund, the fund member is entitled to a monthly base benefit equal to the product of the member's years of service, not to exceed thirty (30) years of service, multiplied by one percent (1%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment.

(2) Except as provided in subdivision (5), a fund member is entitled to receive the benefits set forth in subdivision (1) if:

(A) the fund member had a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund;

(B) the fund member has a Class 3 impairment that is not related in any manner to the Class 3 excludable condition described in clause (A); and

(C) the Class 3 impairment described in clause (B) occurs after the fund member has completed four (4) years of service with the employer after the date the fund member entered or reentered the fund.

(3) Except as provided in subdivision (5), a fund member is not entitled to a monthly base benefit for a Class 3 impairment if:

(A) the fund member had a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund; and

(B) the Class 3 impairment occurs before the fund member has completed four (4) years of service with the employer after the date the fund member entered or reentered the fund.

(4) A fund member is not entitled to a monthly base benefit for a Class 3 impairment if:

(A) the fund member had a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund; and

(B) the Class 3 impairment is related in any manner to the Class 3 excludable condition.

(5) If, during the first four (4) years of service with the employer:

(A) a fund member with a Class 3 excludable condition is

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determined to have a Class 3 impairment; and

(B) the Class 3 impairment is attributable to an accidental injury that is not related in any manner to the fund member's Class 3 excludable condition;

the member is entitled to receive the benefits provided in subdivision (1) with respect to the accidental injury. For purposes of this subdivision, the local board shall make the initial determination of whether an impairment is attributable to an accidental injury. The local board shall forward the initial determination to the director of the PERF board for a final determination by the PERF board or the PERF board's designee.

(f) If a fund member is entitled to a monthly base benefit under subsection (b), (c), (d), or (e), the fund member is also entitled to a monthly amount that is no less than ten percent (10%) and no greater than forty-five percent (45%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment. The additional monthly amount shall be determined by the PERF medical authority based on the degree of impairment.

(g) Benefits for a Class 1 impairment are payable until the fund member becomes fifty-two (52) years of age. Benefits for a Class 2 and a Class 3 impairment are payable:

(1) for a period equal to the years of service of the member, if the member's total disability benefit is less than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment and the member has fewer than four (4) years of service; or

(2) until the member becomes fifty-two (52) years of age if the member's benefit is:

(A) equal to or greater than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment; or

(B) less than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment if the member has at least four (4) years of service.

(h) Upon becoming fifty-two (52) years of age, a fund member with a Class 1 or Class 2 impairment is entitled to receive the retirement benefit payable to a fund member with:

(1) twenty (20) years of service; or

(2) the total years of service and salary, as of the year the member becomes fifty-two (52) years of age, that the fund member would have earned if the fund member had remained in active service

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1 until becoming fifty-two (52) years of age;
2 whichever is greater.

3 (i) Upon becoming fifty-two (52) years of age, a fund member who
4 is receiving or has received a Class 3 impairment benefit that is:

5 (1) equal to or greater than thirty percent (30%) of the monthly
6 salary of a first class patrolman or firefighter in the year of the
7 local board's determination of impairment; or

8 (2) less than thirty percent (30%) of the monthly salary of a first
9 class patrolman or firefighter in the year of the local board's
10 determination of impairment if the member has at least four (4)
11 years of service;

12 is entitled to receive the retirement benefit payable to a fund member
13 with twenty (20) years of service.

14 (j) Notwithstanding section 12.3 of this chapter and any other
15 provision of this section, a member who:

16 (1) has had a covered impairment;

17 (2) recovers and returns to active service with the department; and

18 (3) within two (2) years after returning to active service has an
19 impairment that, except for section 12.3(b)(3) of this chapter,
20 would be a covered impairment;

21 is entitled to the benefit under this subsection if the impairment
22 described in subdivision (3) results from the same condition or
23 conditions (without an intervening circumstance) that caused the
24 covered impairment described in subdivision (1). The member is
25 entitled to receive the monthly disability benefit amount paid to the
26 member at the time of the member's return to active service plus any
27 adjustments under section 15 of this chapter that would have been
28 applicable during the member's period of reemployment.

29 SECTION 9. IC 36-8-8-14.1 IS AMENDED TO READ AS
30 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14.1. (a) Benefits paid
31 under this section are subject to section 2.5 of this chapter.

32 (b) This section applies to an active member who dies in the line of
33 duty after August 31, 1982.

34 (c) If a fund member dies in the line of duty after August 31, 1982,
35 the member's surviving spouse is entitled to a monthly benefit during
36 the spouse's lifetime, equal to the benefit to which the member would
37 have been entitled on the date of the member's death, but not less than
38 the benefit payable to a member with twenty (20) years service at
39 fifty-two (52) years of age. If the spouse remarried before September
40 1, 1983, and benefits ceased on the date of remarriage, the benefits for
41 the surviving spouse shall be reinstated on July 1, 1997, and continue
42 during the life of the surviving spouse.

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(d) If a fund member dies in the line of duty, each of the member's surviving children is entitled to a monthly benefit equal to twenty percent (20%) of the fund member's monthly benefit:

(1) until the child reaches eighteen (18) years of age; or

(2) until the child reaches twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university;

whichever period is longer. However, if the board finds upon the submission of satisfactory proof that a child who is at least eighteen (18) years of age is mentally or physically incapacitated, is not a ward of the state, and is not receiving a benefit under subdivision (2), the child is entitled to receive an amount each month that is equal to the greater of thirty percent (30%) of the monthly pay of a first class patrolman or first class firefighter or fifty-five percent (55%) of the monthly benefit the deceased member was receiving or was entitled to receive on the date of the member's death as long as the mental or physical incapacity of the child continues. Benefits paid for a child shall be paid to the surviving parent as long as the child resides with and is supported by the surviving parent. If the surviving parent dies, the benefits shall be paid to the legal guardian of the child.

(e) If there is no surviving eligible child or spouse, and there is proof satisfactory to the local board, subject to review in the manner specified in section 13.1(b) of this chapter, that the parent was wholly dependent on the fund member, the member's surviving parent is entitled, or both surviving parents if qualified are entitled jointly, to receive fifty percent (50%) of the fund member's monthly benefit during the parent's or parents' lifetime.

(f) If the fund member did not have at least twenty (20) years of service or was not at least fifty-two (52) years old, the benefit is computed as if the member:

(1) did have twenty (20) years of service; and

(2) was fifty-two (52) years of age.

(g) For purposes of this section, "dies in the line of duty" means death that occurs as a direct result of:

(1) personal injury or illness caused by incident, accident, or violence that results from:

(A) any action that the member, in the member's capacity as a police officer:

(i) is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or

(ii) performs in the course of controlling or reducing crime or enforcing the criminal law; or

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~~(2)~~ **(B)** any action that the member, in the member's capacity as a firefighter:

- ~~(A)~~ **(i)** is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or
 - ~~(B)~~ **(ii)** performs while on the scene of an emergency run (including false alarms) or on the way to or from the scene;
- or**

(2) cancer or a heart condition that:

(A) develops and manifests itself while the member is in the service of the member's department; and

(B) may be caused by:

- (i) exposure to heat, radiation, or a known or suspected carcinogen; or**
- (ii) the physical stresses of the member's duties.**

The term includes a death presumed incurred in the line of duty under IC 5-10-13.

(h) The unit of local government that employed the deceased member shall after December 31, 2003, offer to provide and pay for health insurance coverage for the member's surviving spouse and for each natural child, stepchild, or adopted child of the member:

- (1) until the child becomes eighteen (18) years of age;
- (2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university; or
- (3) during the entire period of the child's physical or mental disability;

whichever period is longest. If health insurance coverage is offered by the unit to active members, the health insurance provided to a surviving spouse and child under this subsection must be equal in coverage to that offered to active members. The offer to provide and pay for health insurance coverage shall remain open for as long as there is a surviving spouse or as long as a natural child, stepchild, or adopted child of the member is eligible for coverage under subdivision (1), (2), or (3).

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